

C-08-0004
FILED**JAN 16 2008**

**INTERLOCAL AGREEMENT
FOR
PROJECT NO. 542702 - EAST BELTWAY**

LANC. COUNTY CLERK

THIS AGREEMENT is entered into and executed by and between the County of Lancaster, Nebraska, a political subdivision of the State of Nebraska, hereinafter referred to as "the County," and the City of Lincoln, Nebraska, a municipal corporation, hereinafter referred to as "the City."

WHEREAS, the Interlocal Cooperation Act, Neb. Rev. Stat. §§ 13-801 et seq. (Reissue 1997), permits units of local government in the State of Nebraska to cooperate with other localities on a basis of mutual advantage and thereby provide services in a manner that will best serve local communities; and

WHEREAS, the County and the City agree that it is mutually beneficial to cooperate with right of way acquisition for the East Beltway as it is generally shown in Attachment "A", attached hereto and incorporated by this reference; and

WHEREAS, the County and the City have agreed to share the cost of right of way acquisition for the East Beltway; and

WHEREAS, the County and the City wish to clarify their respective obligations for the division of costs and other matters regarding right of way acquisition for the East Beltway.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is agreed between the parties as follows:

1. Duration: The duration of this Agreement shall be from the date of execution until the completion of the above described right of way acquisition for the East Beltway project. This Agreement may be terminated by either party upon 30 days written notice to the other party.

2. Purpose: The purpose of this Agreement is to clarify the parties respective obligations for the division of costs and other matters regarding right of way acquisition for the East Beltway. The East Beltway is generally located along the 127th Street alignment and is bounded to the north by Interstate 80 and to the south by Nebraska Highway 2 and is located entirely outside of the city limits but within the three mile jurisdiction of the City of Lincoln and entirely within Lancaster County.

3. Funding: This project will be funded equally by the City and County, after using any State and Federal funds designated for the East Beltway project. The County will fund its portion of right-of-way acquisition from the County's yearly budgeted amount, for right-of-way acquisition on the East Beltway, in the Road and Bridge Improvement Program. The City will fund its portion of right-of-way acquisition from the City's yearly budgeted amount, for the East Beltway, in the Streets and Highways Capital Improvement Program. The City shall

obtain the prior approval of the County Engineer for all proposed purchase amounts to be paid for the purchase of Right of Way. Contracts for the purchase of Right of Way shall be subject to the approval of the Lancaster County Board of Commissioners and the Mayor. The costs for the right of way acquisition for the East Beltway project shall not exceed either party's yearly budgeted amount without prior written approval as specified below. The City shall provide the County with a statement indicating that Services have been provided and bill the County for its share. The County shall pay the City within 30 days of receipt of the bill.

4. Responsibilities: The responsibilities of the City and County regarding right of way acquisition for the East Beltway shall be as follows:

A. The County will have the following responsibilities:

- i) The County will contribute one half (½) of the following costs:
 - a. The costs for the purchase of right of way, described in the legal descriptions prepared by the City for the portions of property identified, and agreed upon, by the City and the County Engineer as being necessary for the construction of the East Beltway project; and
 - b. For the cost accrued by the City for creating the legal descriptions, obtaining appraisals, and conducting the negotiations regarding the right of way property.
- ii) The County, through the County Attorney's Office, will cooperate with the City Law Department to perform the legal proceedings for obtaining the right of way.
- iii) The City shall obtain the prior approval of the County Engineer for all proposed purchase amounts to be paid for the purchase of Right of Way. Contracts for the purchase of Right of Way shall be subject to the approval of the Lancaster County Board of Commissioners and the Mayor. The County's share will not exceed its yearly budgeted amount, for right-of-way acquisition on the East Beltway, in its Road and Bridge Improvement Program without the prior written approval of the Lancaster County Board of Commissioners.

B. The City will have the following responsibilities:

- i) The City shall prepare legal descriptions for the purchase of Right of Way of portions of property identified, and agreed upon, by the City and the County Engineer as being necessary for the construction of the East Beltway project.

- ii) The City shall obtain appraisals and conduct negotiations regarding such right of way property.
- iii) The City, through the City Law Department, will cooperate with the County Attorney's Office to perform the legal proceedings for obtaining the right of way.
- iv) The City shall obtain the prior approval of the County Engineer for all proposed purchase amounts to be paid for the purchase of Right of Way. Contracts for the purchase of Right of Way shall be subject to the approval of the Lancaster County Board of Commissioners and the Mayor.
- v) The City will contribute one half (1/2) of the following costs:
 - a. For the purchase of Right of Way, described in the legal descriptions for the portions of property identified as being necessary for the construction of the East Beltway project; and
 - b. For the cost of creating the legal descriptions, obtaining appraisals, and conducting the negotiations regarding such property. The City's share will not exceed its yearly budgeted amount, for the East Beltway, in its Public Works and Utilities, Streets and Highways Capital Improvement Program without the prior written approval of the City.
- C. The City will bill the County, on not less than a monthly basis, for one half (1/2) of all costs right of way costs incurred and identified above, in accordance with Paragraph 4(A)(i) of this Agreement. The County shall initially pay the City for 95 percent of any billing from the City under this project. The County shall pay for the remaining 5 percent after a final audit has been performed to verify the actual eligible costs. All billings to the County shall be to the attention of the County Engineer and the County Finance Director.
- D. Title - All land acquired for right-of-way on the East Beltway pursuant to this agreement shall be held in the name of the County for public right-of-way, until annexed by the City.

5. Independent Contractor: It is the express intent of the parties that this Agreement shall not create an employer-employee relationship. Employees of the City shall not be deemed to be employees of the County and employees of the County shall not be deemed to be employees of the City. The City and County shall be responsible to their respective employees for all salaries and benefits. Neither the City's employees nor the County's

employees shall be entitled to any salary or wages from the other party or to any benefits made to its employees, including but not limited to, overtime, vacation, retirement benefits, workers compensation, sick leave or injury leave. The City and the County shall be responsible for maintaining Worker's Compensation Insurance and Unemployment Insurance for its employees, and for payment of all Federal, State, local and any other payroll taxes with respect to its employees' compensation.

6. Assignment: Neither the County nor the City shall assign its duties and responsibilities under this Agreement without the express written permission of the other party to this agreement, except that the City shall be able to subcontract for the performance of its duties regarding obtaining appraisals and conducting the negotiations.

7. Hold Harmless: Each party agrees to indemnify and hold harmless, to the fullest extent allowed by law, the other party and its principals, officers, and employees from and against all claims, demands, suits, actions, payments, liabilities, judgments and expenses (including court-ordered attorneys' fees), arising out of or resulting from the acts or omissions of their principals, officers, or employees in the performance of this Agreement. Liability includes any claims, damages, losses, and expenses arising out of or resulting from performance of this Agreement that results in any claim for damage whatsoever including any bodily injury, civil rights liability, sickness, disease, or damage to or destruction of tangible property, including the loss of use resulting therefrom. Further, each party shall maintain a policy or policies of insurance (or a self-insurance program), sufficient in coverage and amount to pay any judgments or related expenses from or in conjunction with any such claims. Nothing in this Agreement shall require either party to indemnify or hold harmless the other party from liability for the negligent or wrongful acts or omissions of said other party or its principals, officers, or employees.

8. Administration: The terms and conditions of this Agreement shall be administered by the Director of Public Works and Utilities in cooperation with the County Engineer. This Agreement does not create any separate legal or administrative entity.

9. Severability: If any portion of this Agreement is held invalid, the remainder hereof shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

10. Equal Employment Opportunity: Each party agrees that in providing services pursuant to this Agreement, it shall not discriminate against any employee, applicant for employment, or any other person on the basis of race, color, religion, sex, disability, national origin, age, marital status, receipt of public assistance, or any other basis prohibited by applicable state or federal law.

11. This Agreement constitutes the entire agreement between the parties with respect to the subject matter herein and merges all prior discussions between them. It shall not be modified except by written agreement dated subsequent to the date of this Agreement and signed by all parties.

EXECUTED this 22 day of January, 2008, by Lancaster County.

County of Lancaster, Nebraska

By: Bob Workman
Bob Workman, Chair
Lancaster County Board of
Commissioners

Approved as to form:

This 22 day of January, 2008.

Thomas J. Lacey
Deputy County Attorney
for GARY E. LACEY
County Attorney

EXECUTED this _____ day of _____, 2008, by the City of Lincoln.

City of Lincoln, Nebraska

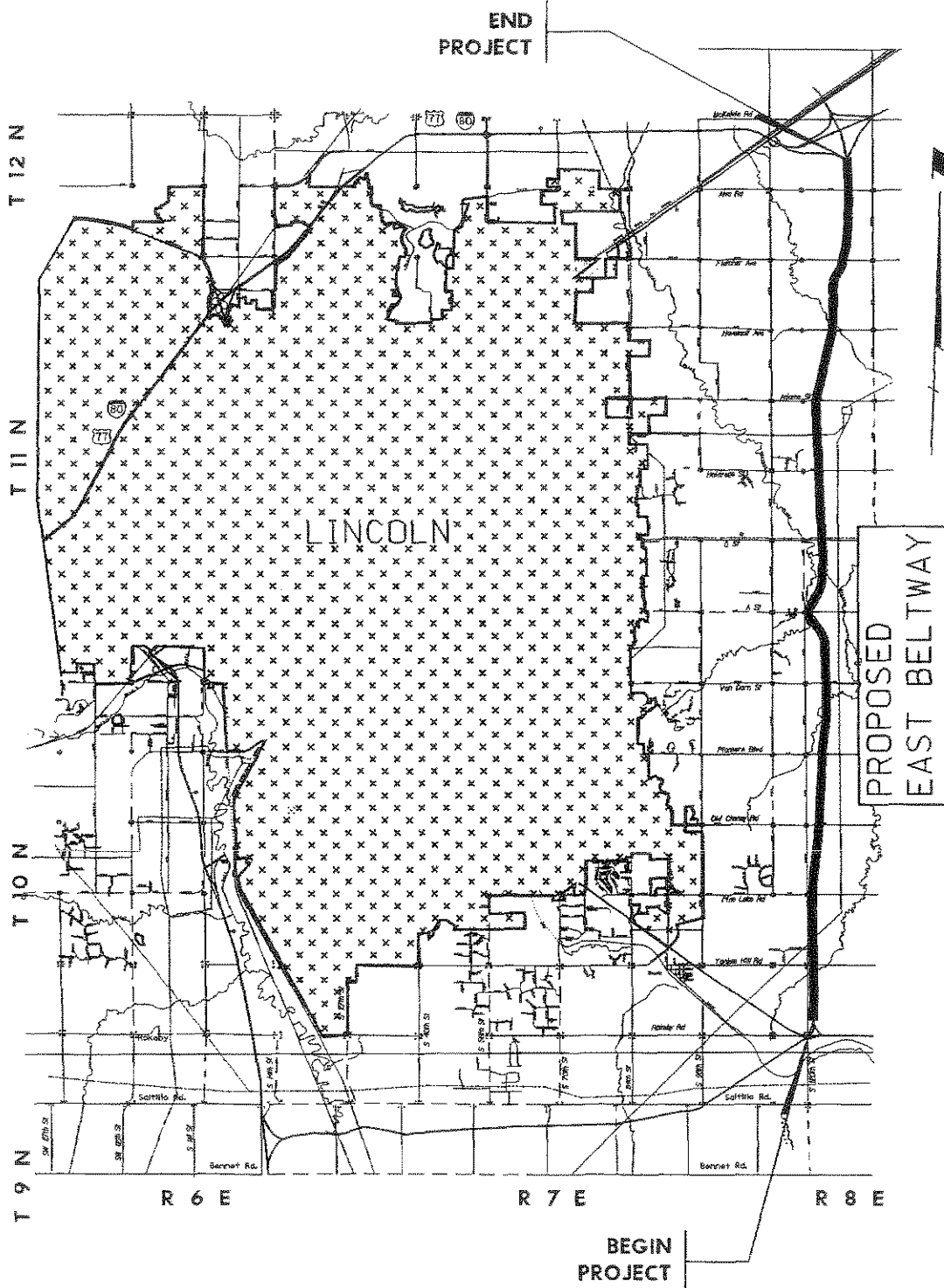
By: Chris Beutler
Mayor Chris Beutler

Approved as to form:

This 14 day of February, 2008.

Dana W. Roper
DANA W. ROPER
City Attorney

LINCOLN
LANCASTER COUNTY
NEBRASKA



DPU-55(156)

C.N. 12848

EXHIBIT "A"